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ELECTION COMMISSION
REGISTRATION CENTER

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April 6, 2005

VIA HAND DELIVERY

Dawn Odrowski, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

2005 APR -6 P 4: 06

FEDERAL
ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 5646

Dear Ms. Odrowski:

This letter is the response of Burton Cohen to the Federal Election Commission's finding of reason to believe that Mr. Cohen knowing and willfully violated 2 U.S.C. § 441i(e)(1)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 110.3(d).

Introduction

As the background of the Commission's Factual and Legal Analysis itself demonstrates, Burt Cohen and his campaign committee, Cohen for New Hampshire, were the victims of a pattern of fraud and deception perpetrated by the then-campaign manager, Jesse Burchfield.

Burt Cohen is a fourteen-year veteran of the New Hampshire State Senate. He filed as a candidate for the United States Senate from the state of New Hampshire on January 16, 2003. His campaign ended on June 10, 2004, when he withdrew from the election due to "a campaign situation beyond his control."¹ That "campaign situation"

¹ B. Wang, *Cohen Not Saying Why He Quit*, ASSOCIATED PRESS, June 11, 2004.

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was the abrupt departure and disappearance of Mr. Burchfield from the campaign, along with the realization by Mr. Cohen and campaign staff that the campaign had hundreds of thousands of dollars less cash-on-hand than the Mr. Burchfield had previously informed both them and the Commission.

The facts as compiled by both the Commission and the campaign reveal that Mr. Burchfield was solely responsible for all aspects of the campaign's operations, including compliance with federal and state election laws. Mr. Burchfield was responsible for preparing the campaign's disclosure reports. Indeed, Mr. Burchfield even signed reports filed with the Commission, forging the name of John Buchalski, the treasurer of the campaign.

Use of Non-Federal Funds to Pay for Federal Campaign Activity

Mr. Cohen last ran for the New Hampshire State Senate in 2002, in District 24. Soon after his re-election to that seat, he announced his candidacy for the United States Senate.

In January and February 2003, the state senate campaign, Friends of Burt Cohen, issued checks to a variety of sources, including staff payments to Mr. Burchfield and Sharon Valdez, and payments for office supplies and postage. Because New Hampshire state contribution limits are only \$1,000 per election; and because Mr. Cohen's state campaign did not receive any contributions from sources prohibited under the Act, none of the funds used violated the Act's contribution limit or source prohibition requirements. Nevertheless, while the contributions and expenditures were reported to the New Hampshire Secretary of State, they were not reported to the Commission.

All of the checks from the state campaign were signed by Mr. Cohen, who remained the sole signatory on the state campaign account. However, these payments were only made due to Mr. Burchfield's initiative, who assured Mr. Cohen and the other campaign staff that they were legal. Until Mr. Burchfield left the campaign in early June 2004, all checks written from either the federal or the state campaign were prepared by Mr. Burchfield for Mr. Cohen's signature.

The Commission's Factual and Legal Analysis states that "Burchfield told Cohen that state funds could not be used in a federal campaign after receiving advice on that issue from a Committee consultant. Cohen apparently 'downplayed' Burchfield's advice with 'a humorous remark' and wrote checks on the state account for federal campaign expenses anyway." This characterization is false.

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During early 2003, Mr. Cohen repeatedly asked Mr. Burchfield if payments from the state senate campaign were permissible. Each time, Mr. Burchfield assured him that these payments were appropriate. Mr. Cohen only discovered that the use of state funds was improper in the fall of 2004, three months after Mr. Burchfield's disappearance.

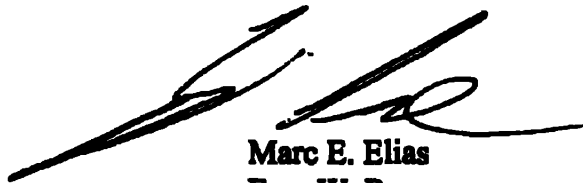
Had Mr. Cohen known that the payments were in violation of the Act, he never would have approved them. The payments were reported – with Mr. Cohen's signature – on the state senate campaign's disclosure reports to the New Hampshire Secretary of State. No effort was made by Mr. Cohen to hide these payments from public scrutiny. The actions of Mr. Cohen are consistent only with ignorance of the requirements of the Act.

Conclusion

In sum, any use of state campaign funds for federal election purposes was clearly neither knowing nor willful. Mr. Cohen was told repeatedly by Mr. Burchfield that the use was legal, and it was Mr. Burchfield who suggested and initiated the practice, assured Mr. Cohen of its appropriateness, and prepared the checks for signature. Mr. Cohen's only action was to sign the checks in ignorance of any violation of the law; that is not sufficient to establish a knowing and willful violation of the Act.

These matters should be resolved in a just manner that reflects Mr. Cohen's extensive and good-faith efforts to comply with the Act.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Counsel to Burton Cohen

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BEFORE THE FEDERAL ELECTION COMMISSION

In re

MUR 5646

Burt Cohen, et al.

AFFIDAVIT OF SHARON VALDEZ

I, Sharon Valdez, do depose and state as follows:

- 1. My name is Sharon Valdez. I reside at _____ Exeter, New Hampshire, 03833.**
- 2. I volunteered to help Burt Cohen during his campaign to be re-elected to the New Hampshire State Senate in 2002. During this campaign period, I worked with Jesse Burchfield, the campaign manager.**
- 3. When Burt Cohen began his candidacy for the United States Senate, I was hired by the campaign as the assistant finance director. Jesse Burchfield was the campaign manager of this campaign.**
- 4. In January 2003, Jesse Burchfield told me that he would be paying my salary out of state senate campaign funds. Burt Cohen was not present during this conversation.**
- 5. Jesse Burchfield told me not to tell anyone that I was being paid with state senate campaign funds.**
- 6. Burt Cohen never, in my presence, mentioned the use of the state campaign funds for the United States Senate campaign, nor did he ever make any joke or comment about such use.**

7. Jesse Burchfield had sole access to both the federal campaign and state campaign checkbooks, as well as any campaign ATM, debit and credit cards. He would habitually bring a number of checks at one time for Burt Cohen to sign.

8. Jesse Burchfield prepared the state senate disclosure reports relating to the 2002 election. He would then ask Burt Cohen and Charles Vaughn, the state campaign's fiscal agent, to sign them.

FURTHER AFFLIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 2, 2005.


Sharon Valdez

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John F. Buchalski

Portsmouth, NH 03801
July 14, 2004

2005 APR -7 A 10:50

FILED
CITY OF PORTSMOUTH
NH
JUL 14 2004

Senator Burton Cohen

New Castle, NH 03854

Dear Senator Cohen:

Due the recent developments in your campaign for the United States Senate, I have determined that I have no alternative but to resign my position as treasurer.

I am sympathetic to the fact that you find yourself in a situation that has forced you to withdraw from your campaign, however, I feel that I cannot be of any future help for the following reasons:

- When you solicited my help I made a point of stating that I could not actively be involved due to the fact that I did not have a financial background and certainly have not had any experience in that arena of political campaigns. I agreed to serve as your campaign as treasurer, in an "honorary" position, because of your loyal support on issues affecting military veterans.
- I had your assurance that I would not have any financial responsibilities and that any papers given to me for signature would be co-signed.
- It was only after your withdrawal from the campaign that I was made aware of the fact that several documents relating to campaign funds contained my "forged" signature.
- Subsequently, I was also made aware of the fact that several letters addressed to me from the Federal Election committee were never received by me.

I respect you as a friend and a man of integrity. I am very sorry that this unfortunate situation resulted in your having to withdraw from the campaign.

Sincerely,

John F. Buchalski